IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 593 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHAMMED HUSSEIN AKBARBHAI GANCHI - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR TS NANAVATI for Petitioner(s) : 1,
MR SIRAJ GORI,AGP for Respondent(s) : 1,3,
MR B.D. KARIA FOR Respondent(s) : 2

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/02/2006

ORAL JUDGMENT

1.Rule. Learned AGP Shri Siraj Gori waives service of notice of rule on behalf of the respondents no. 1 and 3. The learned advocate Shri B.D. Karia waives service

of notice of rule on behalf of the respondent no.2. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. Short grievance made by the petitioner is with respect to not being able to get the measurements done through the office of DILR regarding land bearing survey no. 2651 and 1800 paikee, admeasuring 11736 sq. mtrs. of village Halvad, District Surendranagar. The petitioner had earlier made an attempt by moving the authorities as well as by preferring Special Civil Applications No. 6942/2001 and 5410/2003. Both these petitions came to be disposed of by making certain observations. Eventually, the petitioner applied to the respondent no.3 for the said purpose. His request however, came to be turned down by a communication dated 30-03-2005. Reliance was placed on the pending proceedings before the Gujarat Revenue Tribunal.

3. The learned advocate Shri Nanavati for the petitioner submitted that the measurements are necessary to be produced before the Gujarat Revenue Tribunal in pending proceedings.

4.On the other hand learned AGP Shri Gori submitted that for carrying out measurements, the person interested has to apply in a prescribed form and pay prescribed fees. He further submitted that only if the name of the applicant appears in 7/12 form of village records, that such application can be granted.

5.The learned advocate Shri Karia for the respondent no.2 submitted that the measurements of DILR cannot establish ownership or possessory claims and even if this Court were to grant the request of the petitioner, the respondent no.2 should be permitted to participate when the measurements are being taken.

6.In facts of the above situation, I find it appropriate to grant the request of the petitioner for measurements of land in question. Ordinarily the official respondents are justified in not granting the request for carrying out the measurements at the behest of a person who is not able to establish his right over such a land prima facie. In facts of the present case when the petitioner is trying to establish his right through legal proceedings, in so far as his request for carrying out the measurements is concerned, I see no

reason to refuse the same. Needles to say that any measurement that may be carried out by DILR would not establish title or possessory right over the property in question and all contentions of the petitioner as well as respondent no.2 in this regard would be open.

7. In view of the above observations, this petition is disposed of by directing the respondent no.3 to carry out the measurements of land in question pursuant to application Annexure-F. The respondent no.3 shall intimate to the petitioner as well as respondent no.2 herein the date on which such physical measurements are to be taken, both of whom may be permitted to remain present when such measurements are being taken. This may be concluded expeditiously and preferably within a period of four weeks from the date of receipt of a copy of the order.

8. The learned AGP Shri Gori points out that in application at Annexure-F, the petitioner had also made a request that if such measurements are already taken, certified copies thereof be supplied to the petitioner. It will be sufficient compliance if such measurements are supplied to the petitioner, if in

existence.

9.With these directions, the petition is disposed of. Rule is made absolute to the above limited extent with no order as to costs.

(Akil Kureshi,J.)

(raghu)